IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5005 OF 2005.

The State of Maharashtra. ... Applicant.
Versus.
Faroque Mohd.Shaikh & another. ... Respondents.

Shri U.V.Nikam, A.P.P. for the Applicant.

None for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 8th November, 2006.

P.C.:

1. Heard the learned A.P.P. for the Applicant in support of the application for leave. The Respondents were prosecuted for offence punishable under section 3(a) of the R.P.(UP) Act. According to the case of the prosecution, on 13th August 1993, P.W.1 who was working as a Constable was on duty at Kurla. He apprehended the 1st Respondent who was at the relevant time carrying with him railway springs. According to the prosecution case, the second Respondent was accompanying the 1st Respondent at that time.

2. The prosecution examined only P.W.1-Constable Amit Baban Shah Fakir who allegedly caught the 1st Respondent. Though it is the specific case of the prosecution that the property found in possession of the 1st Respondent was a railway property and after examination of the said property by an expert, a

certificate was obtained, the said expert was not examined. No evidence was led to show that the property allegedly found in possession of the 1st Respondent was a railway property. Even the investigation officer was not examined. The view taken by the learned trial Judge is obviously a possible view which could be taken on the basis of the evidence led by the prosecution. No case is made out for grant of leave. The Application is rejected.

Judge.